



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MTI/160671

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 18, 2014, under Wis. Stat. § 49.85(4), and Wis. Stat. § 227.42, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner's appeal of a 2009 notice of tax intercept is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Katherine May  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 11, 2009 the agency sent the petitioner a notice of tax intercept. The petitioner received this notice.
3. The agency sent the petitioner notices of overpayment, a repayment agreement, and three dunning notices. The petitioner received these notices.

4. The petitioner's taxes were previously intercepted in 2012.
5. On September 18, 2014 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

### **DISCUSSION**

Wis. Stat. §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of W-2 benefits, over-issuance of food stamps, and overpayment of Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The statute further provides that the person has 30 days to request the hearing. Wis. Stat. §49.85(3)(a)2.

In this case the petitioner should have appealed the interception action within 30 days of the December, 2009 interception notice. When a person fails to appeal a negative decision within the statutory time limits, the Division of Hearings and Appeals does not have jurisdiction over the merits of the appeal. In this case the petitioner filed his appeal almost five years after the interception. This is well beyond the 30 day time limit, and the Division of Hearings and Appeals no longer has jurisdiction.

The petitioner argued that he never received any of the notices, and sought to challenge the underlining overpayment. I do not find the petitioner's testimony credible. The petitioner was in federal prison. The notices were mailed with his inmate number. I believe that all notices, but at a minimum at least one of these notices, reached the petitioner. Further, even if he did not receive these notices, his taxes were intercepted in 2012. He did not file an appeal at that time. For all these reasons, the petitioner's appeal of this 2009 tax intercept notice is untimely.

### **CONCLUSIONS OF LAW**

The petitioner's appeal of a 2009 notice of tax intercept is untimely.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

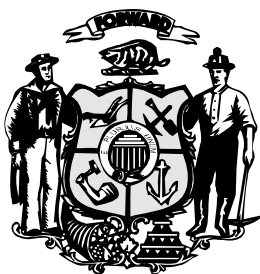
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of February, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 9, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability